

Testimony of Ohio Attorney General Betty D. Montgomery
United States Commerce, Science & Transportation Committee
October 5, 2000
Allocating Ohio Tobacco Settlement Funds

Mr. Chairman, members of the Committee, thank you for providing me with the opportunity to provide testimony to you today on how Ohio has allocated our tobacco settlement dollars.

In March of 1996, our office began a careful analysis of potential litigation claims against the tobacco industry. A year later, we announced our intention to sue.

Here are just two examples of what we found. Our evidence indicated that the industry had engaged in a pattern of corrupt activity by illegally building anti-competitive alliances aimed at deceiving the general public about the dangers of smoking.

We also discovered multiple violations of Ohio consumer protection laws, such as the industry deceiving the public about nicotine addition and their persistent public reference to doubt in the connection between smoking and many diseases of heart and lungs.

However, the primary purpose for filing our lawsuit was that we had evidence that the industry was specifically targeting minors with their marketing campaigns.

As you know, on November 23, 1998, the attorneys general of forty-six states, five commonwealths and territories, and the District of Columbia reached an agreement with the major tobacco companies, which represented approximately 97.5 percent of the U.S. tobacco sales. At least 23 additional manufacturers have since then signed on to the agreement and we continue to work with tobacco producers interested in joining. Worth an estimated \$206 billion over the next twenty-six years, the settlement will provide payments to states based on a formula developed by the attorneys general.

This was the lawsuit heard ‘round the world.’ The settlement was equally as striking. Because of the work of state attorneys general, gone forever are cigarette billboards, tobacco advertisement in teen publications, and multi-million dollar conspiracies to hide the truth about smoking.

Four additional states — Florida, Minnesota, Mississippi, and Texas — individually settled with the tobacco industry for more than \$40 billion additional dollars. Ohio received the fourth largest settlement in the country, which will total \$10.1 billion over 25 years and payments will continue in perpetuity.

Ohio is held up nationally as one of the model states for allocating tobacco settlement funds for public health purposes. In fact, in June of 2000, the Campaign For Tobacco Free Kids quarterly legislative newsletter started to highlight state achievements in earmarking tobacco dollars for public health purposes. That first issue highlighted Ohio’s achievements. Here’s what they said:

“This is a victory for everyone who worked hard to see this law enacted, a model for the nation and most importantly, a win for kids. Way to go Ohio!”

As a result of this newsletter and previous national and regional seminars, our office has been contacted by legislators and public health advocates from a number of states to explain how Ohio successfully used tobacco money to fund smoking cessation and prevention programs as well as other public health priorities. Our general assembly has made a strong commitment to public health priorities by up fronting our settlement dollars for public health-related trust funds. In fact, almost \$2.1 billion or 42% of our dollars that we will receive over the next 12 years will be dedicated to public health issues.

We credit our success in to our regular pre-Master Settlement Agreement (MSA) discussions with the public health community. These groups included the American

Lung Association, the American Heart Association, the American Cancer Association, the Campaign for Tobacco Free Ohio, the Ohio Department of Health, the Ohio Department of Human Services, and the Ohio Hospital Association.

Prior to the creation of the MSA, we frequently met with these organizations to keep them informed about our litigation and negotiations. We also asked for their input on various public-health provisions in drafting the settlement agreement.

Although we chose not to have a seat at the negotiating table, Ohio was a lead state in drafting provisions of the MSA, and we were consulted throughout the negotiation process. When we announced our settlement agreement with the tobacco manufacturers, we stood side-by-side with the public health community.

In fact, I am not aware of any other state that announced the agreement with such strong support from their local public health community.

When the settlement first appeared possible (back in the summer of 1998), we asked our public health coalition to develop a plan on what Ohio could do to best use those settlement dollars, specifically focusing on public health purposes. This blueprint, known as the Statewide Tobacco Use Prevention Plan, was ultimately used as a guide for earmarking our funds. The plan utilized a foundation concept with governing boards. It specifically focused on tobacco prevention and cessation programs, and provided for grants to be awarded on a competitive basis, while encouraging public/private partnerships.

After developing these recommendations, I announced with the Governor and legislative leaders the creation of the Tobacco Settlement Task Force. This bi-partisan Task Force was created to review how best Ohio could spend our settlement dollars. The Task Force included 15 members: four from the administration; 10 lawmakers; and myself. We took open testimony from 60 different witnesses, including my office,

tobacco control organizations, educators, public health organizations, tobacco growers, the National Council of State Legislatures (NCSL), and other interested parties.

In September of 1999, the Task Force issued recommendations (approved by a 14-1 vote), which called for the creation of seven separate trust funds. The individual funds created would be focused on:

- 1.) Health programs;
- 2.) Smoking prevention;
- 3.) Biomedical research;
- 4.) School facilities;
- 5.) Education technology;
- 6.) Aid to tobacco farming regions of the state; and
- 7.) Law enforcement improvements.

These recommendations were then rolled into state legislation which specifically earmarked the settlement dollars into 8 trust funds addressing these seven stated purposes. Our office continued to play a key role in advising the General Assembly, the leadership, and the Administration on the intent of the MSA and its provisions, and we actively supported passage of the bill.

Our Governor signed the package on March 3, 2000. The bill earmarked settlement dollars through FY 2012, covering a period of 13 years. Future leaders of my state will have the responsibility of determining the uses and allocations of funds received in years after that. Please know, the Ohio General Assembly will be required to make appropriations every two years since the Ohio Constitution prohibits the General Assembly from appropriating for more than a two-year period. Although we have a strong standing to commit these dollars for the purposes outlined in our tobacco spending bill, these appropriations will be scrutinized every two years by the General Assembly. We also recognized that the MSA payments are subject to numerous adjustments and that while the amount of future payments could not be predicted, if we were successful in

reducing consumption, the payments would decline. Consequently, we divided most payments among the funds by share, rather than by fixed dollar amount.

Every six years, beginning in January 2012, a committee consisting of three state senators and three state representatives, including minority party representation, will reexamine the use of the tobacco master settlement agreement funds to ensure that the spending of those dollars remains on target to address public health issues.

All the money that Ohio will receive from the tobacco industry will be divided into the eight trust funds. Each trust fund will retain all investment earnings accrued by the particular trust fund.

Here is a brief summary of the trust funds established by the Ohio legislature for the purposes of allocating the proceeds from the tobacco settlement. The following trust funds are specific for public health purposes:

- a. Tobacco Use Prevention and Control Foundation
 1. \$1.26 billion, or 25.3 percent of the total through FY 2012.
 2. The goals of the 20-member foundation include decrease tobacco use by Ohioans, with the emphasis on decreasing use by youth, minority, and others who may be disproportionately affected by tobacco use.
 3. The Foundation shall carry out, or provide funding to other organizations to carry out, research and create programs related to tobacco use prevention and cessation.
 4. The Foundation is the trustee of the endowment fund which would use a combination of interest and principle to carry out its responsibilities. We expect/hope to meet the C.D.C. minimum tobacco control guidelines in Ohio, which amounts to \$5.48 per capita costs.
- b. Ohio's Public Health Priorities Trust Fund

1. \$252.9 million through FY 2012, or 5.1 percent of the total received through FY 2012.
 2. Five areas of use:
 - a. Not less than 25 percent of the annual appropriations to minority health programs
 - b. Enforcing (ORC 2927.02) Ohio's underage tobacco use laws
 - c. Alcohol and drug abuse prevention programs, including programs for adult and juvenile offenders in state institutions and aftercare programs
 - d. 5 percent of the annual appropriations to provide emergency assistance to seniors whose health has been adversely affected by tobacco use and whose income does not exceed 100 percent of the federal poverty guidelines
 - e. Partial reimbursement, on a county basis, of hospitals, free medical clinics, and similar organizations or programs that provide free, uncompensated care to the general public, and of counties that pay private entities to provide such care using revenue from a property tax levied at least in part for that purpose.
- c. Biomedical Research and Technology Transfer Trust Fund and Its Related Commission
1. \$493.5 million, or 9.9 percent of the total received through FY 2012.
 2. 25-member unpaid Commission will provide competitive grants to public and private parties in Ohio for "any of a broad range of activities" related to biomedical research and technology transfer.
- d. Southern Ohio Agricultural and Community Trust Fund
1. \$229.0 million - 4.6 percent of the total amount received through FY 2012.
 2. To provide economic alternatives for tobacco growers.

- e. Law Enforcement Trust Fund
 - 1. \$25.0 million in three installments through FY 2001. - 0.5percent of the total amount received through FY 2012.
 - 2. Allocated to the Attorney General's Office to make capital improvements for the Ohio Peace Officer Training Academy and Ohio Bureau of Criminal Investigation laboratory facilities, which serve law enforcement agencies across the state.

The remaining trust funds are specific to education purposes:

- f. Education Technology Trust Fund
 - 1. Through FY 2012, this trust fund is estimated to receive \$218.7 million, - 4.4 percent of the total settlement received through FY 2012.
 - 2. Pay costs of new and innovative technology at institutions of primary and secondary education, including chartered nonpublic schools, and public colleges and universities or private nonprofit institutions of higher education.
- g. Education Facilities Trust Fund
 - 1. \$1.96 billion between fiscal years 2003 and 2012.
 - 2. Support the state's Classroom Facilities Assistance Program.
- h. Education Facilities Endowment Fund
 - 1. \$65 million through 2012 and specified percentages of the payments from 2013 to 20025.
 - 2. Permanent source of revenue for constructing, renovating, or repairing primary and secondary schools in the state.

In addition to the tobacco trust funds, the legislation also included several other provisions, including:

- a. Department of Rehabilitation and Correction Smoking Regulations
 - 1. Smoking is prohibited in the buildings of certain state correctional institutions.
 - 2. The bill also requires DRC to provide smoking and tobacco cessation programs for prisoners at all state correctional institutions, subject to available funding.
- b. Income Tax Reduction Fund
 - 1. Any year in which tobacco payments to the state exceed the amounts estimated by the Office of Budget and Management in the final report of the Governor's Tobacco Task Force, the excess is to be credited to the Income Tax Reduction Fund.
 - 2. Used to fund temporary income tax reductions in the subsequent calendar year.
- C. Prohibition on Lobbying – Our new law also prohibits using any portion of the Tobacco MSA dollars for political activity or lobbying.

We brought our lawsuit against the tobacco industry because of their unscrupulous business practices of specifically targeting minors. This historic settlement gives us the unique opportunity to start protecting not only our children, but also our communities as a whole.

I am proud to have helped craft this spending plan through a systematic, strategic, and inclusive effort. Our efforts balances the health care needs of Ohioans with a number of other needs that were neglected because we had spent tens of millions of dollars to pay for tobacco-related health care costs over the past half century.

In Ohio, credit is due many people – including our governor, leaders and members of our legislature, and many committed and involved public health advocates – for crafting our plan.

We have worked together to turn the negative byproducts of the tobacco industry's behavior into positive achievements that have a real impact on all Ohioans.

I'm gratified that this plan is seen as a model for other state leaders who are also seeking to balance their resources and needs in a similar responsible fashion.

Thank you for the opportunity to provide testimony this morning, and I will be happy to answer any questions that you might have.

Thank you.